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SUBJECT: POLITICAL CONSENSUS KEY TO OVERCOMING LEGAL  
OBSTACLES TO SLEIMAN PRESIDENCY

Classified By: A/DCM Raouf Youssef for reasons 1.4 (b) and (d).

SUMMARY

1. (SBU) With momentum for Lebanese Armed Forces (LAF) Commander Michel Sleiman's presidential candidacy growing, attention is focused on the procedures for amending the constitution to allow a sitting high-level government official to run. March 14 announced on December 2 that Sleiman was its choice for a consensus candidate, and that it planned to initiate the amendment process in parliament. Both Michel Aoun's Free Patriotic Movement and Hizballah have indicated they will support Sleiman's candidacy, although their support is linked to Aoun's initiative to nominate a non-March 14 prime minister and other conditions. Meanwhile, Speaker (and Amal leader) Nabih Berri is studying the legal mechanisms for an amendment, given that, without a president for the first time since the 1989 Taif accord, Lebanon finds itself in an unprecedented legal situation.

2. (SBU) March 14 legal advisors and at least one opposition MP are confident that a legal mechanism for amending the constitution in these extraordinary circumstances (a laborious and complicated procedure even with a normally functioning cabinet and parliament) will be found. The real question is whether the opposition (and its Syrian and Iranian backers) will use legal obstacles as road blocks to Sleiman's candidacy in an effort to extract more concessions on cabinet formation and program or even ultimately to block it altogether. Sleiman's election is not in the bag yet, and we foresee many twist and turns ahead as both sides use the ambiguous legal context to further their own political gains. End summary.

THE ISSUE

3. (SBU) Article 49 of the constitution, which discusses procedures for electing the president, states that it is not possible "to elect judges, grade one civil servants, or their equivalents in all public institutions to the Presidency during their term of office or within two years following the date of their resignation and their effective cessation of service, or following retirement." As Commander of the Lebanese Armed Forces (LAF), Michel Sleiman currently falls under this prohibition; however, Article 49 already has been amended three times: 1) in 1995, under Syrian pressure, to extend the mandate of President Elias Hroui for three years; 2) in 1998, to allow then LAF Commander Emile Lahoud to be elected president; and 3) in 2004, again under Syrian

pressure, to extend the mandate of President Elias Hroui for three years. Articles 76 and 77 outline the two possible procedures for the constitutional amendment that is necessary to pave his way to Baabda Palace.

THE SIMPLE WAY:  
CABINET INITIATES

13. (SBU) Under Article 76 of the constitution, one option for amendments starts with a proposal from the president. After the midnight November 23 departure of President Lahoud, PM Siniora's cabinet assumed presidential powers, in accordance with Article 62 of the constitution. The Siniora cabinet, acting in its presidential role, could propose an amendment to the cabinet. Then, assuming its government role, the Siniora cabinet would vote on the amendment, requiring two-thirds approval. (Note: 16 out of 24 ministers must vote in favor; six opposition ministers walked out of parliament a year ago, leaving 17, leaving room for only one vote against. End note.) The approved amendment would then go to parliament, where a two-thirds majority is required for it to pass.

THE LONGER PATH:  
PARLIAMENT INITIATES

14. (SBU) The second way to amend the constitution, under Article 77, and the one chosen by March 14, is for at least ten MPs (of a total of 128) to propose an amendment during an ordinary legislative session. A two-thirds majority would have to approve it before Speaker Berri can then submit it to the cabinet. The cabinet then must also approve the draft amendment by a two-thirds majority.

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15. (SBU) However, the cabinet can reject the draft amendment and send it back to parliament. If parliament insists on pursuing the amendment, it requires a three-fourths majority of its members to approve it. If it achieves that, the president of the republic must either comply with the amendment and send back a draft law, or the cabinet will dissolve parliament and hold new elections within three months. In that case, the newly elected parliament may still insist on the amendment, thus constraining the cabinet to submit a draft law within four months.

ROAD BLOCK NUMBER ONE:  
PARLIAMENT IS IN ELECTORAL,  
NOT LEGISLATIVE, MODE

16. (SBU) According to Article 75 of the constitution, parliament, having failed to elect a president by the mandated midnight November 23 end of President Lahoud's term, can only convene as an electoral body, not as a legislative body. Since President Lahoud's departure, Parliament Speaker Berri cannot, some might argue, convene parliament to amend the constitution.

17. (C) Aoun bloc MP Ghassan Moukheiber, a prominent lawyer, however, disagrees, saying parliament can pass legislation during this period. He believes parliament is considered an electoral college only when it convenes to elect a new president; since it has not yet done so, it can amend the constitution. Berri himself thus far has not raised parliament's electoral duties as an obstacle to amending the constitution.

ROAD BLOCK NUMBER TWO:  
"ILLEGITIMATE "SINIORA GOVERNMENT

18. (SBU) The opposition refuses to recognize the legitimacy

of the Siniora government since the November 11, 2006 walkout of six opposition ministers, including all five Shia ministers, deprived it of its confessional balance. By allowing the cabinet to play its role in the amendment process, the opposition would be implicitly recognizing its legitimacy, and, by extension, the legitimacy of all government decrees issued over the passed year (including one calling for the establishment of the Special Tribunal).

¶9. (SBU) March 14 has opted for initiating the amendment in parliament to avoid further criticism that the "illegitimate" Siniora government is undertaking political actions that it has no right to do. However, cabinet still must play a role in the process. By beginning in parliament, however, March 14 hopes to make it more difficult for Speaker Berri to challenge the process.

LEGAL OPINIONS VARY,  
BUT ALL AGREE: KEY  
IS POLITICAL CONSENSUS  
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¶10. (C) MP Bahije Tabbarah, a prominent jurist close to the Hariri family, told Polstaff on November 28 that the key issue is whether the opposition would recognize the cabinet as legitimate and constitutional. Tabbareh added that parliament, now entrusted with electing a new president, could justify the amendment, provided all agree that the only candidate is Michel Sleiman. If there is consensus over Sleiman, this issue become irrelevant and the process could go smoothly.

¶11. (C) March 14 MP's Boutros Harb and Ammar Hourri believe that amending the constitution is not the problem; parliament and the cabinet could find the *raison d'etat* to do so. The important question is whether there is national consensus on Sleiman, and what position the opposition will take. Hourri added that the majority's acceptance of Sleiman is based on fear of prolonging the political vacuum and looming security destabilization.

¶12. (C) According to Berri advisor Ali Hamdan, once there is political consensus on Sleiman's candidacy, the resigned Shia ministers would return to the cabinet, restoring its legitimacy and allowing it to propose a constitutional amendment according to the procedures described in paragraph

¶13. However, Hamdan also suggested that the fully restored

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cabinet would need to review all past government decrees, a process he estimated would take "no more than an hour."

¶13. (C) Speaker Berri announced on November 29 to Arab nationalist al-Safir that he would support Sleiman, on condition that the majority and opposition agree on him. He is calling on March 14 to "reach an understanding" with Aoun to pave the way. Aoun, meanwhile, is conditioning his support on acceptance of his recent initiative, i.e., that the PM is not a member of March 14, that his 2006 MOU with Hizballah remains the basis for discussions, etc. etc. Hizballah, for the time being, is still hiding behind Aoun. In other words, while the opposition claims to support Sleiman's candidacy (no one here would be foolish enough to risk angering the army by outright rejecting it), it will seek as many concessions as it can on other, arguable more critical issues, such as cabinet formation and program, before giving the green light to legal procedures.

COMMENT  
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¶14. (C) The battered Lebanese constitution is, as recent history has shown, extremely prone to manipulation in the interest of political imperatives. Ultimately, if the opposition agrees to Sleiman's presidency (and that remains a big "if," contingent upon what other political concessions

they can extract in the process), legal issues will not be an obstacle.

FELTMAN